

**EXHIBIT A**

**Biden Administration's**  
**Notices Relating to Its Intention to Propose**  
**Amendments to Department of Education's**  
**Title IX Regulations**

**(Notice of Proposed Rulemaking**  
**to be Issued in or about April 2022)**

# U.S. Department of Education

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## Office for Civil Rights Blog

### AN UPDATE ON THE RULEMAKING PROCESS FOR TITLE IX

February 18, 2022



Yesterday, the Department of Education sent (<https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>) the draft of our proposed amendments to the Department's regulations implementing Title IX of the Education Amendments of 1972—the law that prohibits all forms of sex discrimination in education programs and activities that receive federal funding—to the Office of Information and Regulatory Affairs (OIRA), the part of the Office of Management and Budget responsible for coordinating the review of all Executive Branch regulations.

Our submission of the draft amendments, known as a Notice of Proposed Rulemaking, or NPRM, is the next, important, step in the Department's effort to advance the priorities set out in President Biden's executive orders on guaranteeing all students an educational environment free from sex discrimination, including sexual violence (<https://www.govinfo.gov/content/pkg/FR-2021-03-11/pdf/2021-05200.pdf>), and preventing and combating discrimination based on gender identity and sexual orientation (<https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>). As President Biden stated, "all students should be guaranteed an educational environment free from discrimination on the basis of sex, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity." Within the Office for Civil Rights, we are guided by those words; they are at the heart of the mission of our office, and we take seriously our charge to fulfill the promise embodied in Federal civil rights laws.

At this stage of the rulemaking process, the draft NPRM remains internal to the federal government and is not yet available for public viewing. OIRA coordinates an interagency Executive Branch review of the draft. The process, known as a 12866 review, implements Executive Order 12866 (<https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>), issued in 1993 to ensure an effective rulemaking process across federal agencies. The process includes an analysis of the costs and benefits of proposed rules and is designed to promote accountability to the public. For more on OIRA review of agency proposed rules, please see the FAQs on OIRA's website (<https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp>).

In addition to OIRA's coordinated review, the NPRM draft will also be reviewed by the Department of Justice (DOJ), which has responsibility under Executive Order 12250 ([https://www.justice.gov/sites/default/files/crt/legacy/2013/05/31/EO\\_12250.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/05/31/EO_12250.pdf)) for reviewing federal agencies'

proposed rules related to civil rights, including proposed rules that would prohibit discriminatory practices on certain bases, including sex, in programs and activities receiving federal funds. For more on this review, please see DOJ's website (<https://www.justice.gov/crt/federal-coordination-and-compliance-section-202>).

Following these review processes, the Department anticipates publishing the NPRM in the Federal Register, at which point the public will have the opportunity to comment on the proposed regulations and preamble. We look forward to sharing more information about the public comment process at the time of publication.

While the proposed amendments to the Title IX regulations undergo the processes described above, OCR continues active enforcement of Title IX and its implementing regulations. As we have noted (<https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>), however, OCR has ceased enforcement of the regulatory requirement in 34 C.F.R. § 106.45(b)(6)(i) regarding the prohibition against relying on statements not subject to cross-examination, following a ruling from a Federal district court vacating that requirement. *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), *appeals pending* (1st Cir.).

Again, this submission is part of our comprehensive commitment to ensure that schools are providing students with educational environments free from sex discrimination, including sexual violence and discrimination based on sexual orientation and gender identity—it is one step of many taken and more to come.

For more on the Department's efforts to ensure implementation of Title IX's prohibition on sex discrimination in federally funded education programs and activities, please see OCR's blog post on Our Commitment to Education Environments Free From Sex-Based Harassment, Including Sexual Violence (<https://www2.ed.gov/about/offices/list/ocr/blog/20211008.html>).

Catherine E. Lhamon  
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**RIN Data****ED/OCR****RIN:** 1870-AA16**Publication ID:** Fall 2021**Title:** Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance**Abstract:**

The Department plans to propose to amend its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity. We anticipate this rulemaking may include, but would not be limited to, amendments to 34 CFR 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.30 (Definitions), 106.44 (Recipient's response to sexual harassment), and 106.45 (Grievance process for formal complaints of sexual harassment).

**Agency:** Department of Education(ED)**Priority:** Other Significant**RIN Status:** Previously published in the Unified Agenda**Agenda Stage of Rulemaking:** Proposed Rule Stage**Major:** Undetermined**Unfunded Mandates:** Undetermined**CFR Citation:** [34 CFR 106](#)**Legal Authority:** [20 U.S.C. 1681 et seq.](#)**Legal Deadline:** None**Statement of Need:**

This rulemaking is necessary to align the Title IX regulations with the priorities of the Biden-Harris Administration, including those set forth in the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (EO 13988) and the Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity (EO 14021).

**Summary of the Legal Basis:**

We are conducting this rulemaking under 20 U.S.C. 1681 et seq.

**Alternatives:**

We have limited information about the alternatives at this time.

**Anticipated Costs and Benefits:**

We have limited information about the anticipated costs and benefits at this time.

**Risks:**

We have limited information about the risks at this time.

**Timetable:**

Action	Date	FR Cite
NPRM	04/00/2022	

**Regulatory Flexibility Analysis Required:** Undetermined**Government Levels Affected:** Undetermined**Federalism:** Undetermined**Included in the Regulatory Plan:** Yes**RIN Data Printed in the FR:** No**Agency Contact:**

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